

**U.S. DEPARTMENT OF TRANSPORTATION  
FEDERAL RAILROAD ADMINISTRATION  
WASHINGTON, D.C.**

DEPT. OF TRANSPORTATION  
DOCKETS

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L.M. Keith, Hearing Petitioner  
Locomotive Engineer Certification  
Docket No. FRA-2006-26608

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**JOINT RESPONSE OF RESPONDENTS THE KANSAS CITY SOUTHERN  
RAILWAY COMPANY AND FEDERAL RAILROAD ADMINISTRATION  
TO PETITIONER'S INITIAL STATEMENT OF CLAIMS AND REQUEST  
FOR RELIEF**

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Respondents The Kansas City Southern Railway Company ("KCSR"), and the Federal Railroad Administration ("FRA") (collectively, "Respondents") hereby submit this response to Petitioner's Initial Statement of Claims and Request for Relief ("Initial Statement") in the above-captioned matter:

**I. Issues That May Be Resolved As A Matter Of Law**

Respondents deny that KCSR erred in revoking Petitioner's engineer certification. Any required interpretation of 49 C.F.R. § 240.307(i) would be an issue that might be properly resolved as a matter of law. However, Petitioner has not specifically identified any issue requiring an interpretation of any part of that regulation. While Petitioner asserts that KCSR's revocation of his certification is an "unjust result not intended by FRA's rules," citing 58 Fed. Reg. 18982, 19001 (April 9, 1993), Petitioner has identified no issue under that regulation that could be resolved as a matter of law.

## **II. Issues Requiring The Submission Of Evidence**

Respondents are hopeful that the parties will be able to stipulate to some of the facts leading up to the incident at issue in this case. For example, there appears to be no factual issue concerning the speed of the train, nor does there appear to be any issue as to the fact that Petitioner was operating the train at more than 10 mph in excess of the speed permitted for a Key Train. Moreover, there does not appear to be any issue as to the fact that, after picking up additional cars in Vicksburg, Petitioner was operating a train that contained more than 20 car loads of vinyl chloride.

Petitioner has identified two issues that may require the submission of evidence. First, with respect to Petitioner's contention that he did not exceed the permissible speed limit in violation of 49 C.F.R. § 240.117(e)(2), the determination of this issue is directly related to the application of railroad rules for determining key train status. Second, Petitioner asserts that the applicable operating rules and instructions "expressly vest exclusive responsibility for determining whether a train meets the definition of a 'key train,' and communicating that fact to others, with Conductors."

Both of these issues appear to be contained within the factual determination as to whether, under 49 C.F.R. § 240.307(i), there is sufficient evidence to establish that an intervening cause prevented or materially impaired Petitioner's ability to comply with the KCSR operating rule or practice concerning the speed restrictions on a Key Train. Specifically, Petitioner

appears to be asserting that the fact that the consist did not identify the train as a Key Train would constitute such an intervening cause, either solely or in combination with Petitioner's sole reliance on the Conductor to determine and communicate that the train was a Key Train. As to that issue, Respondents agree that evidence may be necessary not only concerning the operating rules and practices at issue, but also concerning Petitioner's knowledge that he was operating a Key Train. In addition, evidence may be necessary to evaluate the reasonableness of Petitioner's sole reliance on the Conductor for this information, given the ready availability of other sources for this information and Petitioner's joint responsibility for the operation of the train.

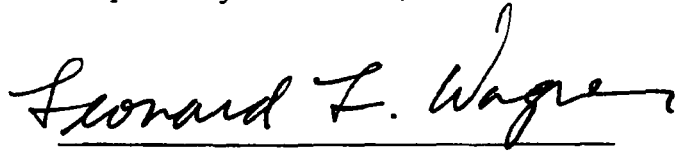
### **III. Objections Concerning Relief Sought**

Respondents do not dispute that in this proceeding the hearing officer has authority to consider *de novo* under 49 C.F.R. § 240.409 KCSR's decision to revoke Petitioner's engineer's certification. However, Petitioner has the burden of proof to prove his case by a preponderance of the evidence (49 C.F.R. § 240.409(q)) and must show that sufficient evidence exists to establish that an intervening cause prevented or materially impaired Petitioner's ability to comply with the KCSR operating rule or practice concerning the speed restrictions on a Key Train (*see* 49 C.F.R. § 240.307(i)(1)). Petitioner has

demonstrated no basis for overturning KCSR's decision to revoke his certification.

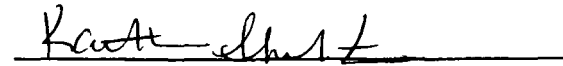
Respectfully submitted,

Dated: January 5, 2009

A handwritten signature in cursive script, reading "Leonard L. Wagner", written over a horizontal line.

Leonard L. Wagner  
The Kansas City Southern Railway  
Company

Dated: January 5, 2009

A handwritten signature in cursive script, reading "Kathryn Shelton", written over a horizontal line.

Kathryn Shelton  
Federal Railroad Administration

**CERTIFICATE OF SERVICE**

Docket No. FRA-2006-26608


The undersigned hereby certifies that on January 6, 2009, the foregoing document, RESPONSE OF RESPONDENTS THE KANSAS CITY SOUTHERN RAILWAY COMPANY AND FEDERAL RAILROAD ADMINISTRATION TO PETITIONER'S INITIAL STATEMENT OF CLAIMS AND REQUEST FOR RELIEF, has been served by U.S. Mail to all parties named below:

Mr. Lanie M. Keith  
4000 Highway 514  
Meridian, MS 39301

Mr. John R. Koonce  
General Chairman  
Brotherhood of Locomotive Engineers and Trainmen  
5909 Shelby Oaks Drive, Suite 139  
Memphis, TN 38134

Mr. Richard K. Radek  
International Vice-President  
The Brotherhood of Locomotive Engineers  
Arbitration Department  
500 Standard Building  
1370 Ontario Street  
Cleveland, OH 44113-1702

Dated: January 6, 2009

  
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Kathryn Shelton

**CERTIFICATE OF SERVICE**


Docket No. FRA-2006-26608

The undersigned hereby certifies that on January 5, 2009, the foregoing document, RESPONSE OF RESPONDENTS THE KANSAS CITY SOUTHERN RAILWAY COMPANY AND FEDERAL RAILROAD ADMINISTRATION TO PETITIONER'S INITIAL STATEMENT OF CLAIMS AND REQUEST FOR RELIEF, was personally served to all parties named below:

Gareth W. Rosenau, Esq.  
Administrative Hearing Officer  
Federal Railroad Administration  
Mail Stop 10 (Room W31-316.A)  
1200 New Jersey Avenue, S.E.  
Washington, DC 20590

DOT Docket Clerk  
Central Docket Management System  
Docket Operations, M-30  
West Building Ground Floor (Room W12-140)  
1200 New Jersey Avenue, S.E.  
Washington, DC 20590

Dated: January 5, 2009

  
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Kathryn Shelton